

(2019) 08 DEL CK 0134

In the Delhi High Court

Case No : Civil Writ Petition No. 6541, 6543 Of 2017

Ankush Jain

APPELLANT

Vs

Pr. Commissioner Of Income Tax-4

RESPONDENT

Date of Decision : 21-08-2019

Acts Referred:

Income Declaration Scheme Rules, 2016 — Rule 4, 4(1), 4(3), 4(5)
Finance Act, 2016 — Section 183, 183(1), 184, 185, 193
Income Tax Act, 1961 — Section 127, 132, 139, 148
Prohibition Of Benami Property Transactions Act, 1988 — Section 24(4), 190

Citation : (2019) 9 AD(Delhi) 237

Hon'ble Judges : Dr. S. Muralidhar, J; Talwant Singh, J

Bench : Division Bench

Advocate : Rakesh Tikku, P. Roy Choudhary, Lokesh Bhardwaj, Jyotsna Mehta ,
Sushil Kumar Gupta, Maninder Acharya, Zoheb Hossain

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J

1. These are two writ petitions arising out of a similar set of facts and are being disposed of by this common judgment.

The issue

2. The short issue involved here is whether the Principal Commissioner of Income Tax-4 ("PCIT-4") was justified in passing the impugned order dated 9 th June, 2017 under Section 183 of the Finance Act, 2016 ("FA, 2016") in respect of the Income Declaration Scheme, 2016 ("IDS"), holding the declaration made by each of the Petitioners under the IDS to be void under Section 193 of the FA, 2016 on the ground that it was made both by misrepresenting and suppressing facts.

The IDS

3. The facts in brief are that, the IDS became operational in terms of Chapter-IX

of the FA, 2016 with effect from 1st June, 2016. The object of the IDS was to encourage disclosure of hitherto undisclosed income and payment of surcharge and penalty on such undisclosed income. This was provided for in terms of Sections 183, 184, 185 of the FA, 2016. Section 183 (1) of the FA, 2016 reads as under:

"Declaration of undisclosed income.

183. (1) Subject to the provisions of this Scheme, any person may make, on or after the date of commencement of this Scheme but before a date to be notified by the Central Government in the Official Gazette, a declaration in respect of any income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year beginning on the 1st day of April, 2017-

(a) for which he has failed to furnish a return under section 139 of the Income-tax Act;

(b) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Scheme;

(c) which has escaped assessment by reason of the omission or failure on the part of such person to furnish a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

(2) Where the income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset as on the date of commencement of this Scheme shall be deemed to be the undisclosed income for the purposes of subsection (1).

(3) The fair market value of any asset shall be determined in such manner, as may be prescribed.

(4) No deduction in respect of any expenditure or allowance shall be allowed against the income in respect of which declaration under this section is made."

4. The declaration had to be made to the Principal Commissioner or the Commissioner in Form-1 as per Rule 4 (1) of the Income Declaration Scheme Rules, 2016 ("IDS Rules, 2016"). After the issuance of acknowledgement in Form 2 that the declarant had paid the tax, surcharge and penalty, the Principal Commissioner or the Commissioner had to grant the declarant a Certificate in terms of Form-4. Rule 4 of the IDS Rules reads as under:

"Declaration of income or income in the form of investment in any asset.

4. (1) A declaration of income or income in the form of investment in any asset under section 183 shall be made in Form-1.

(2) The declaration shall be furnished:

(a) electronically under digital signature; or

(b) through transmission of data in the form electronically under electronic verification code; or

(c) in print form, to the concerned Principal Commissioner or the Commissioner who has the jurisdiction over the declarant.

(3) The Principal Commissioner or the Commissioner shall issue an acknowledgement in Form-2 to the declarant within fifteen days from the end of the month in which the declaration under section 183 has been furnished.

(4) The proof of payment of tax, surcharge and penalty made pursuant to the acknowledgement issued by the Principal Commissioner or the Commissioner shall be furnished by the declarant to the such Principal Commissioner or Commissioner in Form 3.

(5) The Principal Commissioner or the Commissioner shall grant a certificate in Form-4 to the declarant within fifteen days of the submission of proof of full and final payment of tax, surcharge along with penalty by the declarant under section 187 of the Act in respect of the income so declared.

(6) The Principal Director-General of Income-tax (Systems) or Director-General of Income-tax (Systems) shall specify the procedures, formats and standards for ensuring secure capture and transmission of data and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to furnishing the form in the manner specified in sub-rule(2).

Explanation. For the purposes of this rule "electronic verification code" means a code generated for the purpose of electronic verification of the person furnishing the return of income as per the data structure and standards specified by Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems)."

5. Section 193 of the FA, 2016 begins with a non-obstante clause and reads as under:

"Declaration by misrepresentation of facts to be void.

193. Notwithstanding anything contained in this Scheme, where a declaration has been made by misrepresentation or suppression of facts, such declaration shall be void and shall be deemed never to have been made under this Scheme."

Background facts

6. Each of the Petitioners availed of the IDS by filing a declaration under Section 183 of the FA, 2016 in Form-1 on 27th September, 2016. Each of the Petitioners, declared an income of Rs.8,26,91,750/- as investment in shares of various companies in the assessment years (AYs) 2011-2012, 2012-2013 and 2016-2017.

7. After the filing of the above declarations, the Designated Authority ("DA") issued an acknowledgement in Form-2 under Rule 4 (3) of the IDS Rules. As far as Ankush Jain, the Petitioner in W.P. (C) No. 6541/2017 is concerned, the DA

issued an acknowledgement in Form-2 under Rule 4 (3) of the IDS Rules determining the amounts payable as under:

"Tax- 2,48,07,525/-

Surcharge- 62,01,881/-

Penalty- 62,01,881/-."

8. A separate acknowledgement was issued by the DA in respect of Vaibhav Jain, the Petitioner in W.P. (C) No. 6543/2017. Thereafter, the Petitioners made full payment of the tax, penalty and surcharge and submitted Form- 3 to the PCIT (9), New Delhi on 19th December, 2016.

9. The PCIT, CPC, Bangalore accepted the two declarations made by the Petitioners under Section 183 of FA, 2016, with reference to the undisclosed income of Rs.8,26,91,750/- for each petitioner and issued a certificate in Form-4 read with Rule 4 (5) of the IDS Rules.

Impugned order of the PCIT

10. Subsequently, the PCIT (4), New Delhi passed the impugned order on 9th June, 2017 under Section 183 of the FA 2016, holding that the above declaration of income of Rs.8,26,91,750/- by each of the Petitioners was made "by suppression and misrepresentation of facts." Therefore, both declarations were held to be "void".

11. The PCIT referred to the report submitted by the ACIT, Special Range-4 dated 7th June, 2017 with regard to the assessment proceedings in the case of M/s Akinchan Developers Private Limited, M/s Indo Metal Impex Private Limited, M/s Prayas Infosolutions Private Limited and Mr. Satyender Kumar Jain. In the said report, it was noted in paras 6 & 7 as under:

"6. As per the report, assessment proceedings in the case of M/s Akinchan Developers Pvt. Ltd. (A.Y. 2011-12 and 2012-13), M/s Indo Metal Impex Pvt. Ltd (A.Y. 2011-12 and 2012-13) and M/s Paryas Infosolutions Pvt. Ltd (A.Y. 2012-13) were initiated u/s 148 of the I.T. Act by the Assessing Officer, Addl. CIT Special.Range-4, New Delhi, on the basis of information received from the Office of Principal DIT Investigation, Kolkata in August 2016, that these companies have taken accommodation entries in the form of share capital from Kolkata based shell companies. Subsequently, on the basis of further investigation, the Assessing officer issued notices u/s 148 for A.Y: 2011-12 and 2012-13 to Shri Satyendar Kumar Jain (AAMPJ5555B) after recording reasons.

7. The information regarding accommodation entries was also received by the Initiating officer for further examination and necessary action under the Prohibition of Benami property Transaction Act, 1988. The Initiating officer, after making necessary inquiry and considering evidence issued provisional attachment orders u/s 24(4) of the Prohibition of Benami property Transaction Act, 1988 on 24.05.2017 by holding Shri Satyendar Kumar Jain as the beneficial

owner of the bogus share capital introduced in the companies mentioned earlier.
The details of the orders passed by the Initiating Officer are as under:

S.No.

Name of Benamidar

Name of Beneficial Owner

Amount

1.

Akinchan Developers P. Ltd.

Shri Satyender Kumar Jain

4,85,83,200/-

2.

Indo Metal Impex p. Ltd.

Shri Satyender Kumar Jain

7,14,00,000/-

3.

Paryas Inforsolutions P. Ltd.

Shri Satyender Kumar Jain

2,49,00,300/-

4.

Goodview Tradecom P. Ltd.

Shri Satyender Kumar Jain

42,00,000/-

5.

Mubarak Lubricants P. Ltd.

Shri Satyender Kumar Jain

12,00,000/-

6.

Puniya Leather P. Ltd.

Shri Satyender Kumar Jain

35,00,000/-

7.

Virat Vintrade P. Ltd

Shri Satyender Kumar Jain

40,62,500/-

8.

R.P.Vyapaar P.Ltd.

Shri Satyender Kumar Jain

15,37,500/-

9.

Salona Dealtrade P.Ltd.

Shri Satyender Kumar Jain

22,50,000/-

10.

Swarnim Commosale P. Ltd.

Shri Satyender Kumar Jain

22,50,000/-

12. The PCIT in the impugned order noted that provisional attachment orders under Section 24 (4) of the PBPT Act were passed on 24th May, 2017 and in respect of the same, observed that "on careful consideration of all material available," it had been decided that each of the Petitioners had made declaration of undisclosed income under the IDS "by misrepresentation and suppression of facts".

13. The PCIT adverted to Form No.1 submitted by the Petitioners and noted that in the 3rd Column where the names under which the shares were held had to be mentioned, it was written, "multiple names". According to the PCIT, the investment in shares declared by each of the Petitioners actually belonged to one Mr. Satyender Kumar Jain. Reliance was placed upon the provisional attachment order under Section 24 (4) of the PBPT Act. It was pointed out that although the Petitioners had declared an investment in the shares of Akinchan Developers Private Limited (ADPL); it was held that the said investments did not actually belong to the Petitioners, Ankush Jain and Vaibhav Jain, but in fact to Mr. Satyender Kumar Jain.

14. The PCIT in the impugned order placed reliance on the report submitted by ACIT, Special Range-4, New Delhi dated 7th June, 2017 with regard to assessment proceedings in the case of M/s Akinchan Developers Private Limited

("ADPL"), M/s Indo Metal Impex Private Limited ("IMIPL"), M/s Prayas Infosolutions Private Limited and Mr. Satyender Kumar Jain. A similar proceeding was initiated in the case of Mr. Vaibhav Jain. While Mr. Ankush Jain stated that he came to know about the proceedings only after the receipt of the impugned order dated 9th June, 2017, a similar order was passed in the case of companion writ Petitioner Vaibhav Jain. It is in the above circumstances that these writ petitions were filed challenging the impugned order dated 9th June, 2017 of the PCIT, who had rejected the declaration of undisclosed income on the ground that each of the Petitioners had both misrepresented as well as suppressed facts.

15. This Court has heard the submissions of Mr. Rakesh Tikku, learned senior counsel appearing on behalf of the Petitioners and Ms. Maninder Acharya, the learned ASG of India appearing on behalf of the Respondent, PCIT.

Submissions on behalf of the Petitioners

16. One of the grounds of challenge raised by the Petitioners is that the impugned order was passed in violation of the principles of natural justice, since no prior notice was issued to either of the Petitioners before passing the impugned order rejecting the declarations of undisclosed income under the IDA scheme. It is also contended that the order passed under Section 183 of the Act was a quasi-judicial one and could not have been passed without prior notice to each of the Petitioners. In support of this proposition, reliance is placed on the decisions in *East India Commercial Communication Company Ltd. Calcutta v. The Collector of Customs, Calcutta* AIR 1962 SC 1893, *Union of India v. Madhumilan Syntex Private Limited* (1988) 3 SCC 348 and *Metal Forgings. v. Union of India* (2003) 2 SCC 36, *C.B. Gautam v. Union of India* (1993) 1 SCC 78.

17. It is further submitted that the impugned order was based on a report, a copy of which was never provided to either of the Petitioners. Thirdly, it is submitted that the PCIT-4, New Delhi or the DA had no jurisdiction to pass the impugned order since a declaration was made to the PCIT, CPC, Bangalore. This was a jurisdictional defect which went to the root of the matter. It is pointed out that each of the Petitioners had given full particulars of the shares invested and the declarations had in fact been accepted by the PCIT, CPC, Bangalore, by issuing an acknowledgement in Form No.4.

18. It is submitted that the reliance on the order dated 24th May, 2017 passed under the PBPT Act was misplaced. According to the Petitioners, the proceedings under the PBPT Act, which were with respect to one of the companies in which the Petitioners has invested, had no effect on the declaration made by each of them under the IDS. Reference is made to Section 190 of the PBPT Act to urge that the provisions thereof had no applicability to income disclosed under the IDS. Lastly, it is submitted that the IDS is a beneficial scheme and has to be construed liberally.

Submissions on behalf of the Respondents

19. On behalf of the Respondents, Ms. Maninder Acharya, ASG of India submitted as under:

(i) The admitted fact was that each of the Petitioners had under the column in Form-1 which is titled "names in which, the shares were held" simply stated "multiple names". Such a declaration ex facie amounted to suppression of facts.

(ii) There was no option with the Respondent No.1 but to pass the impugned order since Section 193 of the FA, 2016 was straightaway attracted.

(iii) Under Rule 4 (5) of the IDS Rules, the issuances of Form- 4 constituted receipt of the proof of full and final payment of tax, surcharge and penalty by the declarant. The mere acceptance of the declaration under Form-4 did not mean that power under Section 183 of the FA, 2016 could not be exercised.

(iv) There was no question of violation of the principles of natural justice. The IDS was a one-time measure giving the Assessee an opportunity to make a complete and full disclosure. Section 183 of the FA, 2016 did not envisage issuance of any show cause notice (SCN) before passing an order under Section 193 of the FA, 2016 for failure to comply with the requirements of the IDS.

20. Ms. Acharya explained that the consequence of rejection of declaration under the IDS is that the said amount would be assessed under the normal procedure established under the Act, where in any event each of the Petitioners would be heard. Reference is made to the decision in Hemlatha Gargya v. CIT (2003) 259 ITR 1 (SC). There was sufficient material available with the Respondents, which indicated that the amount declared in the IDS was that of Mr. Satyender Kumar Jain. In other words, the undisclosed income sought to be declared under the IDS by each of the Petitioners actually belonged to Mr. Satyender Kumar Jain and therefore this was a clear suppression of a material fact which justified the rejection of the declarations.

Analysis and reasons

21. The above submissions have been considered. The purpose underlying the enactment of the IDS, which was introduced under the FA, 2016, has been set out in the Notes on Clauses to the FA, 2016, which read as under:

"An opportunity is proposed to be provided to persons who have not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totalling in all to forty-five per cent of such undisclosed income declared.

The scheme is proposed to be brought into effect from 1st June 2016 and will remain open up to the date to be notified by the Central Government in the official gazette. The scheme is proposed to be made applicable in respect of undisclosed income of any financial year upto 2015-16. Tax is proposed to be charged at the rate of thirty per cent on the declared income as increased by surcharge at the rate of twenty five per cent of tax payable (to be called the

Krishi Kalyan cess). A penalty at the rate of twenty five per cent of tax payable is also proposed to be levied on undisclosed income declared under the scheme."

22. The Notes on Clauses further explained the IDS as under:

"Clauses 178 to 196 of the Bill seeks to insert a new Chapter IX relating to Income Declaration Scheme, 2016. The said Scheme, inter alia, provides for declaration of undisclosed income by any person. The scheme shall be in operation from the 1st day of June, 2016 till a date to be notified by the Central Government in the Official Gazette. The proposed Chapter, inter alia, provides for levying a tax of thirty per cent on the undisclosed income declared in the scheme, a surcharge at the rate of twenty-five per cent, of such tax as Krishi Kalyan Cess, and penalty at the rate of twenty-five per cent, of tax; procedure and manner of filing the declaration under the said Scheme; undisclosed income declared under the said Scheme not be included in the total income or affect finality of completed assessments; income declared under the said Scheme shall not be refundable; exemption from wealth-tax in respect of assets specified in declaration; power to remove difficulty by the Central Government; and power of Central Board of Direct Taxes with the approval of the Central Government to make rules for the purposes of the said Scheme."

23. As rightly pointed out, the IDS itself was a one-time measure to enable those who had failed to disclose their income with the view to avoid the payment of tax thereon, to make good this lapse by making a complete and full disclosure in the manner specified in the IDS.

24. This was explained by the Supreme Court in the context of an earlier Voluntary Disclosure of Income Scheme, 1997 (VDIS), analogous to the IDS in the present case, in Hemalatha Gargya v. Commissioner of Income Tax (2003) 259 ITR 1 (SC). There, the Supreme Court emphasised that Assesseees who seek the benefit by the VDIS are bound to comply strictly with the conditions under which such benefit is granted. The following observations in the said judgment are relevant to this context:

"Besides the scheme has conferred a benefit on those who had not disclosed their income earlier by affording them protection against the possible legal consequences of such non-disclosure under the provisions of the Income-tax Act. Where the assesseees seek to claim the benefit under the statutory scheme they are bound to comply strictly with the conditions under which the benefit is granted. There is no scope for the application of any equitable consideration when the statutory provisions of the scheme are stated in such plain language.

Seen from the angle of the designated authority, which is created under the Scheme, it is clear that the authority cannot act beyond the provisions of the Scheme itself. The power to accept payment under the Scheme has been prescribed by the statute. There is no scope for the Revenue authorities to imply a provision not specifically provided for which would in any way modify the explicit terms of the Scheme."

25. In the present case, a perusal of the disclosure forms submitted by Assesseees reveal that in Column 6, which concerns "statement of undisclosed income (as per annexure)", there is a separate statement of undisclosed income where for the three years i.e. 2011, 2012 and 2016, the amounts have been disclosed. In the column title "description", it uniformly states, "invested in shares in multiple names", whereas for 2011 and 2012 it states, "notice of 148 issued after 1st June, 2016 for Indo, Akinchan and Prayas". For 2016, it states "invested in shares of multiple names of "Akinchan", "Prayas" and "Mangal Yatan." The use of the phrase "multiple names" is again repeated in Part-B of the form, which is titled "unquoted equity share of Rule 3 (1)(c)(ii)" under the column which reads "names under which held", the phrase "multiple names" is simply stated throughout.

26. This must be read together with the verification, where each of the applicants has solemnly declared that "the information given in the declaration is correct and complete to the best of my knowledge and belief" and in particular that in addition to the own income of the declarant for which the declaration is made "the income of any other person in respect of which have not chargeable to tax has not been included in this declaration".

27. There is another specific declaration in para H which reads, "the income declared is not chargeable to tax under the Income Tax Act for any previous year relevant to assessment year where a search has been conducted under Section 132". It is further expressly stated that "the undisclosed income declared in the form of investment in Benami Property and existing in the name of Benamidar shall be transferred in the name of real owner on or before 30th September, 2017 failing which immunity under Benami Transactions (Prohibition) Act, 1988 shall not be available". Therefore, the form itself made it abundantly clear to the person seeking benefit under the IDS that the disclosure had to be both truthful and complete.

28. It is in this context that in Section 193 of the FA, 2016 it was made clear that where the declaration under the IDS is made by misrepresentation or suppression of facts "such declaration shall be void" and "shall be deemed never to have been made under the scheme". The forms also have a statutory character as they are prescribed under the IDS Rules.

29. The Court is not persuaded by the submission of the Petitioners that each of them ought to have been issued a notice prior to the impugned order being passed. Even now, neither of the Petitioners has any explanation to offer for not specifying the complete details of the persons in whose names the shares in which investments had been made were actually held.

30. There are eight companies whose shares were purchased by the two Petitioners, whose names have been included in the list. Admittedly, in respect of the shares in ADPL, proceedings under Section 24 (4) of the PBPT Act, 1988 have been initiated. The Petitioners have themselves enclosed a copy of the order

dated 24th May, 2017 passed in respect of the "Benamidar" i.e. ADPL, which inter-alia notes that the cash that was routed through accommodation entries in the garb of share capital/premium in fact belonged to Mr. Satyender Kumar Jain and that it was at his direction that the entire transaction was orchestrated. It was noted that neither of these two Petitioners was either a Director or Shareholder in the said company. It was noted that the declarants had not provided the name of the "Benamidar" through whom the investment had been routed and that these facts were all completely within the knowledge of the two Petitioners. These conclusions of the PCIT have not been convincingly countered by either of the Petitioners. In the circumstances, the PCIT was right in concluding that neither of the Petitioners had made a full and true disclosure of all material facts.

31. In *Tanna & Modi v. CIT, Mumbai* (2007) 7 SCC 434 the Supreme Court upheld the action of the Respondent declaring the certificate issued under the Kar Vivad Samadhan Scheme, 1998 to be null and void on account of suppression of facts by the declarant. It was held in para 20 as under:

"20. It may be necessary for the aforementioned purpose to bear in mind that the immunity granted pursuant to acceptance of a declaration made under the voluntary taxation scheme or Kar Vivad Samadhan Scheme, 1998 does not lead to a total immunity. Immunity granted under the Scheme has its own limitations. The Scheme must be applied only in the event the conditions precedent laid down therefor are applicable. See *State, CBI v. Sashi Balasubramanian and Alpesh Navinchandra Shah v. State of Maharashtra*."

32. The mere fact that an acknowledgement may have been issued in Form- 4 by the CIT, CPC did not provide any immunity to the Petitioners if it was found that the declaration was contrary to Section 193 of the FA, 2016 which begins with a non-obstante clause.

33. There is no merit in the objection to the jurisdiction of the PCIT, Delhi to issue the impugned order. The fact remains that the Petitioners' declarations were uploaded electronically at Delhi where both Petitioners reside. Their assessments were completed in Delhi. The explanation offered in the counter affidavits of the Respondent that the PCIT-30, New Delhi had by an order dated 10th January, 2017 under Section 127 of the Act transferred jurisdiction to Additional Commissioner of Income Tax, Special Range-4 who in turn was authorised to make the impugned order merits acceptance. Moreover, since this is a case of suppression of material facts the Respondent No.1 was duty bound to give effect to the provision provided under Section 193 of the FA, 2016.

34. Therefore, where the jurisdictional Principal Commissioner/ Commissioner of Income Tax finds a declaration to be based on such misrepresentation or suppression of facts, he would not be precluded from holding the declaration itself to be void in terms of Section 193 of the FA, 2016. The Court accepts the contention of the Respondent that there is no provision as such in the IDS to

afford the declarant a hearing prior to passing an order holding such declaration to be void for being in contravention of Section 193 of the FA, 2016.

35. For all of the aforementioned reasons, the Court finds no error having been committed by Respondent No.1 in passing the impugned order.

36. The writ petitions are dismissed but in the circumstances with no order as to costs.